Supreme Court, U.S.
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No. 00-806

In The

Supreme Court of the United States

DR. AHMAD A. VADIE,

Petitioner,

v.

MISSISSIPPI STATE UNIVERSITY,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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ARGUMENT

The Petition for Writ of Certiorari should be denied. None of the reasons identified in Supreme Court Rule 10 for granting certiorari exist. Petitioner is erroneously asserting a misapplication of a properly stated rule of law.

Petitioner purports to quote a section from the Circuit Court's opinion on page 6 of the Petition. Petitioner wrongfully inserts three lines of his own language into the first sentence of the purported quotation, omits a phrase from the last sentence of the purported quotation, and cites an incorrect page citation for the purported quotation. Thus, Petitioner's citations to and quotations of law must be treated with caution.[1]

Response to Petitioner's Reason I

Petitioner claims that the Circuit Court in the case *sub judice* refused to follow a recent decision of this Court, specifically, *Reeves v. Sanderson Plumbing Prods, Inc.*, 530 U.S. 133, 120 S. Ct. 2097, 147 L.Ed.2d 105 (2000). Analysis under Reason I is limited to the "national origin" discrimination and "retaliation" claims alleged to have occurred in November 1995.[2]

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[1] Petitioner inserts language into purported quotations, misquotes court opinions, deletes language from cited opinions, and creates quotations. Examples, in addition to the ones mentioned in the above text include, but are not limited to the purported Justice Ginsburg quotation on page 7 and the quotations at the top of pages 8 and 11.

[2] The allegations of racial and national origin discrimination related to non-selection for a 1993 position were

The Petitioner produced no evidence of "national origin" discrimination and failed to produce even a scintilla of evidence that "national origin" played a role in the 1995 decision. Also, the record is void of evidence that would lead one to conclude that the Respondent's articulated reasons were "false." *Vadie v. Mississippi State University*, 218 F.3d 365, at 372-74 (5th Cir. 2000); See also App. 13-16 to Petition.

Proof of "falsity" of the employer's explanation, not just disbelief of it, is a critical element to be established by a plaintiff. *Reeves, supra*. Justice Ginsburg in her concurring opinion in the *Reeves* case makes it clear that to receive the benefit of a discriminatory inference the plaintiff must introduce " . . . evidence from which a rational factfinder could conclude that the employer's proffered explanation for its actions was **false**." *Reeves, supra*, at 120 S. Ct. 2112. [Emphasis added]

The Circuit Court specifically explained the impact of the *Reeves* decision on the case *sub judice* and applied the law as set forth in *Reeves, supra*. *Vadie, supra*, at fn. 23. See also App. 14-16 to Petition. The Petition should be denied.

Response to Petitioner's Reason II

The Petitioner is asking this Court to determine what "standard of review" is to be used by an appellate court to review a trial court's denial of a judgment as a matter of law. *Reeves, supra*, answers his question.

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barred as untimely because the petitioner failed to timely file an EEOC complaint. *Reeves, supra*, is not applicable to the claims pertaining to the 1993 position.

Reeves, as in the case *sub judice*, was an appeal from a reversal by the circuit court of a trial court's denial of a respondent's motion for judgment as a matter of law. *Reeves, supra*, at 120 S. Ct. 2104. The discussion by this Court in the *Reeves* case[3] of the review performed by the circuit court, in conjunction with the articulated review by this Court of the law and facts in the *Reeves* case, demonstrate that the "standard of review" used by the Circuit Court was then, and is now, the appropriate "standard of review." *Reeves, supra*. This Court stated that it was a misapplication of the "standard of review", not an erroneous "standard of review", that required reversal of the circuit court's decision. *Reeves, supra*, at 120 S. Ct. 2111. The Petition should be denied.

Response to Petitioner's Reason III

The Petitioner claims that it is outside the scope of authority and in violation of the Seventh Amendment for an appellate court to grant a remittitur of damages. Where, as in the case *sub judice*, the appellate court has directed dismissal of the two 1993 claims of discrimination and judgment against the Petitioner in the 1995 discrimination claim, leaving only a 1995 retaliation claim intact with no evidence of damages related thereto, remittitur is not only within the authority of the appellate court, remittitur is demanded by the law. Remittitur is an approved appellate action and does not violate the Seventh Amendment when, as in the case *sub judice*, the plaintiff is offered an opportunity for a new trial on

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[3] The Circuit Court in the case *sub judice* is the same Circuit Court that rendered the *Reeves* decision.

damages. *Hetzel v. Prince William County, Virginia*, 523 U.S. 208, at 211, 118 S. Ct. 1210, 140 L.Ed.2d 336 (1998)[4] The Petition should be denied.

Response to Petitioner's Reason IV

The Petitioner argues that the Circuit Court failed to include magic language in its opinion, such as "shocked its judicial conscience" or "grossly excessive." (App. 15) However, the case law cited by the Petitioner (App. 14) rebuts his own argument. In 1996, this Court quoted favorably from *Ismail v. Cohen*, 899 F.2d 183 (2d Cir. 1990) that: "A remittitur, in effect, is a statement by the court that it is shocked by the jury's award of damages." *Gasperini, supra*, at 116 S. Ct. 2221, fn. 10. Further, this Court stated: "Nothing in the Seventh Amendment . . . precludes appellate review of the trial judge's denial of a motion to set aside [a jury verdict] as excessive." *Gasperini*, 116 S. Ct. 2211, at 2224, *supra*, citing, quoting from, and adopting a portion of Justice Stewart's dissenting opinion in *Grunenthal v. Long Island R. Co.*, 393 U.S. 156, 21 L.Ed.2d 309, 89 S. Ct. 331 (1968) at 393 U.S. 164. The Petition should be denied.

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[4] The Petitioner cites Third Circuit case law that is purportedly inconsistent with the decision of the Circuit Court in the case *sub judice*. It is not. The Plaintiff also cites *Gasperini v. Center for Humanities*, 518 U.S. 415, 116 S. Ct. 2211, 135 L.Ed.2d 659 (1996), apparently for the proposition that an appellate court must restrict its review of a motion for a new trial to an abuse of discretion standard. Whether *Gasperini* stands for that proposition or not with regard to new trials, the Circuit Court in the case *sub judice* applied an "abuse of discretion" standard when reviewing the mental anguish damages alleged by the Petitioner at trial. (See first paragraph at App. 21)

CONCLUSION

The Petition for Writ of Certiorari should be denied. None of the compelling reasons set forth in Rule 10 of the Supreme Court Rules upon which to base a grant of certiorari exist. The Circuit Court of Appeals decisions adhered to the law, including the recent decisions of this Court. There is no variance between the Circuit Court's interpretation of the law on the issues in the case *sub judice* with other circuits. The Circuit Court's decision contains nothing to even hint of a violation of the Seventh Amendment.

The Writ should be denied.

Respectfully submitted,

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